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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,399

03/15/2006

Alan H. Winfield

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CANADA

EXAMINER

EPPES, BRYAN L

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

07/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,399	<b>Applicant(s)</b> WINFIELD, ALAN H.	
	<b>Examiner</b> BRYAN EPPES	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is a final office action on the merits for application serial number 10/537,399 filed 6/2/2005. The office action is in response to the amendment filed 4/14/2008. Claims 1-2 are pending.

#### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: “the first and second lateral members” (Line 8) lacks proper antecedent basis after the amendment. Appropriate correction is required.

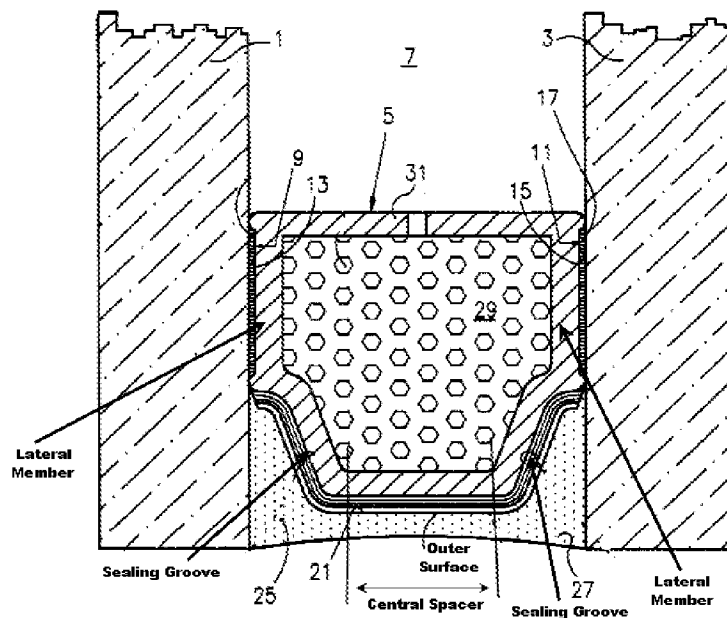
#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Trautz (U.S. Patent 5,962,090).



- a. Claim 1: Trautz discloses an insulation window comprising:
- i. A pair of outer panes 1 and 3 defining an air space therebetween;
  - ii. A spacing member 5 disposed between the outer panes comprising a central spacer and opposing lateral members, wherein the central spacer engages and separates the opposing lateral members and at least one lateral member comprises a means for retaining an interior film, shown as the sealing mass in either contact surface 9 or 11 which is capable of sandwiching a film (e.g. tinting) between a pane and the spacing member 5, wherein the spacing member further comprises an outer surface extending between lateral members;
  - iii. Wherein each lateral member defines a sealing groove;
  - iv. A gas-tight seal element 27, described as preferably polysulfide or silicone, contained within each sealing groove; and

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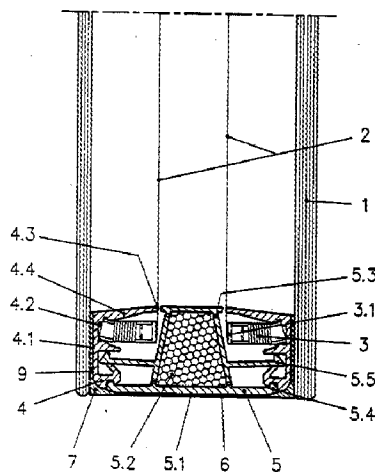
- v. A metal band 21 parallel to and overlaying the outer surface, wherein the band comprises edge flanges which fit into the sealing grooves, thereby isolating the central spacer outer surface from the seal element 27 (See Modified Fig. Above; Fig. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grether, deceased et al. (U.S. Patent 5,237,787) in view of Trautz (U.S. Patent 5,962,090).



- b. Claims 1 and 2: Grether, deceased et al. discloses an insulation window comprising:
- vi. A pair of outer panes 1 defining an air space therebetween;
  - vii. Wherein the spacing member comprises a central spacer, described as separation profile 5, and opposing lateral members, described as tension profiles 4, wherein the central spacer 5 engages and separates the opposing lateral members 4 and at least one of the lateral members 4 comprises means for retaining an interior film 2, described as weld-caps 3.1 and helical springs 3 (See unmarked Fig.), wherein the spacing member further comprises an outer surface 5.1 extending between the lateral members;
  - viii. Wherein each lateral member 4 defines a sealing groove 7 (Col. 4 Lines 50-53).
  - ix. A gas-tight seal element, described as a butyl adhesive (Col. 4 Line 46), contained within each sealing groove 7;
  - x. A metal band 6, described as rust-proof stainless steel (Col. 4 Line 45), parallel to and overlaying the outer surface (See Unmarked Fig.).

Grether, deceased et al. lacks a metal band comprising edge flanges which fit into the first and second sealing groove. Trautz teaches a metal band (Trautz Ref. # 21) comprising edge flanges which fit into the first and second sealing grooves to provide an improved adhesive bond between the non-butyl sealing mass and the spacer member. Therefore, it would have been obvious to

one of ordinary skill in the art, at the time of the invention, to modify the metal band of Grether, deceased et al. with a band that includes flanges which extend into the first and second grooves to provide an improved adhesive bond between the non-butyl sealing mass and the spacer member.

### ***Response to Arguments***

4. Applicant's arguments filed 4/14/2008 have been fully considered but they are not persuasive.

c. Applicant argues the '090 Patent lacks a central spacer, opposing lateral members and means for retaining an interior film. Examiner respectfully disagrees. The specific features are set out in the modified figure and claims above.

d. Applicant argues the '787 Patent lacks a central spacer is not separated into a central spacer and opposing lateral elements. Examiner respectfully disagrees. See features 5 and 4 of '787 set out in the claims above.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRYAN EPPES whose telephone number is (571)270-3109. The examiner can normally be reached on M-F; alt. Fri. off (7:30am-5pm EST.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert Canfield  
Examiner  
Art Unit 3635

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